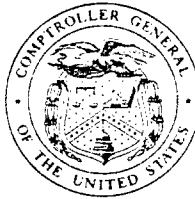


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-201071

DATE: July 16, 1981

MATTER OF: Sprayfoam Southwest, Inc.

DIGEST:

1. Protest based upon alleged impropriety which is apparent prior to bid opening and which was filed with GAO after date set for bid opening is untimely.
2. Low bid, which takes no exceptions to specifications, and which offers to furnish compliant material in accordance with all terms and conditions of IFB is responsive.
3. Whether material provided is compliant with specifications is matter of contract administration, which is responsibility of contracting agency, not GAO.

Sprayfoam Southwest, Inc. protests the award of a contract to Arizona Foam and Spray under invitation for bids (IFB) No. F02604-80-B0071 issued by the Department of the Air Force, Luke Air Force Base, Arizona for the repair of miscellaneous family-housing roofs.

Bids were opened on September 22, 1980 with the following results:

Arizona	\$53,900
Sprayfoam	\$71,000

The Air Force awarded the contract to Arizona on September 30, 1980. Sprayfoam has protested the award based largely on the following general specification contained in the solicitation.

"7.2 Protective Coating on Urethane Foam: Provide material approved equal to United Coating Company 'Diathon' brand, which is a non-oxidizing high solids type, elastomeric acrylic rubber waterproofing seal."

[Protest of Air Force Contract Award]
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Sprayfoam contends: 1) that the specifications which refer to one or more brand name products followed by the word "equal" failed to list necessary "salient characteristics" of the products; 2) that the bid of Arizona was nonresponsive because that firm is not using the product or its equal as called for in paragraph 7.2 of the specifications; and 3) that the contracting officer acted improperly in considering data eventually submitted by Arizona concerning its "equal" material as required by paragraph 7.2 of the specifications since such data was specifically prepared for the present procurement and was not publicly available prior to bid opening.


Concerning Arizona's first basis of protest, our Bid Protest Procedures provide that any protest based upon an alleged impropriety which is apparent prior to bid opening must be filed in our Office prior to the date set for bid opening. 4 C.F.R. § 20.2(b)(1) (1980). Here, Arizona did not file its protest concerning the lack of "salient characteristics" until after award. Under our Bid Protest Procedures, therefore, this specific basis of protest is untimely and thus will not be considered.

With regard to Arizona's second and third bases of protest, we initially note that paragraph 7.2 is a portion of the general specifications concerning proper performance of the work. In its bid Arizona took no exception to the specifications and therefore agreed to provide equipment and material in accordance with all the terms and conditions of the IFB. Moreover, whether the equipment and material eventually supplied by Arizona complies with Air Force specifications is a matter of contract administration for the contracting agency and does not affect the validity of the award. Impact Instrumentation, Inc., B-198704, July 28, 1980, 80-2 CPD 75. We also note that there is no requirement in the solicitation for a bidder to submit descriptive literature or data prior to bid opening concerning any "equal" product it intends to use during contract performance. For example, while paragraph 9.1 of the specifications requires the submittal of certain printed specifications and descriptive data concerning proposed materials and methods of installation, this paragraph does not specifically require that this information be submitted prior to bid opening. This procurement simply was

not a "brand name or equal" procurement in which the acceptability of the "equal" item offered is generally determined on the basis of literature and data submitted with the bid. See Defense Acquisition Regulation § 1-1206.2 (1976 ed.).

Accordingly, since in its bid Arizona took no exception to the specifications and since the documentation submitted after bid opening did not relate to the responsiveness of Arizona's bid, we find no basis to disturb the award to Arizona.

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Arnold".

Acting Comptroller General
of the United States